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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,) No. CR 09-01157 DLJ
14 Plaintiff,) STIPULATION AND **PROTECTIVE**
15 v.) **ORDER REGARDING PRODUCTION OF**
16 JOSE ANTONIO CRUZ,) **CONFIDENTIAL DISCOVERY**
17 Defendant.)
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19 Plaintiff, by and through its attorney of record, and defendant, by and through his
20 attorney of record, hereby stipulate and ask the Court to find as follows:

21 1. A federal grand jury has returned an indictment charging defendant with:

22 (1) conspiracy to distribute, and possess with intent to distribute, fifty grams or more of actual
23 methamphetamine (21 U.S.C. §§ 846, 841(b)(1)(A)(viii)); (2) distribution, and possession with
24 intent to distribute, methamphetamine (21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii), (B)(viii)); and
25 (3) distribution of methamphetamine within 1,000 feet of a playground (21 U.S.C. § 860).

26 2. The government believes that the proposed protective order is necessary to
27 preclude discovery materials, which may reflect the identities of potential witnesses and
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STIPULATION AND PROPOSED PROTECTIVE
ORDER REGARDING CONFIDENTIAL DISCOVERY

1 cooperating defendants, or information from which those identities may be discovered, from
2 being disseminated among members of the public and the various defendants related to this case.

3. The parties agree that no inference should be drawn about defendant's
4 dangerousness because of his agreement to enter into this stipulation and be subject to the
5 protective order.

6. The parties agree that the following conditions, if ordered by the Court, should
7 serve the government's interest in protecting witnesses, defendants, and other members of the
8 community by precluding the circulation of sensitive information and evidence, while permitting
9 the defense to obtain discovery. Accordingly, the parties jointly request that the Court order as
10 follows:

11. a. For purposes of this Order, the term "defense team" refers to: (1) the
12 counsel of record for defendant and any other attorneys and staff at his firm given access to
13 Confidential Discovery as defined in this Order; (2) defense investigators assisting counsel with
14 this case; and (3) any expert witnesses who may be retained by the defense team. Each member
15 of the defense team must provide the government with a letter indicating that they have read this
16 stipulation and agree to be bound by its terms. For purposes of this Order, the term "defense
17 team" does not include defendant.

18. b. The government is authorized to provide the defense team with discovery
19 required by F.R.Cr.P. 16 and may, in its discretion, designate any discovery produced as
20 "Confidential Discovery" to be governed by the terms of this protective order. The government
21 may designate discovery as confidential by marking such discovery as "CONFIDENTIAL" and
22 shall produce such discovery in a binder or on a DVD or CD marked "WARNING: CONTENTS
23 SUBJECT TO PROTECTIVE ORDER. UNAUTHORIZED COPYING OR VIEWING IS
24 SUBJECT TO PUNISHMENT AS CONTEMPT OF COURT."

25. c. The defense team shall not permit anyone, including defendant, to have
26 physical possession of Confidential Discovery pursuant to this Order other than the defense
27 team.

28. d. The defense team shall not make photographic or electronic copies of the

1 Confidential Discovery. The defense team shall not divulge or show the contents of any
2 Confidential Discovery provided pursuant to this Order to anyone other than the individual
3 defendant it represents. The defense team may show Confidential Discovery to the individual
4 defendant it represents in the physical presence of a defense team member but may not permit
5 that defendant to have physical possession of the Confidential Discovery.

6 e. The defense team shall not permit Confidential Discovery provided
7 pursuant to this Order to be outside of the defense team's offices, homes, vehicles, or personal
8 presence. The defense team may take Confidential Discovery into a custodial facility to show it
9 to the individual defendant it represents but, as explained above, the defense team must maintain
10 physical possession of the Confidential Discovery and may not allow the defendant to have or
11 retain physical possession of the Confidential Discovery.

12 f. In the event that one of the parties files a pleading that references or
13 contains Confidential Discovery or information therefrom, that filing must be made under seal.

14 g. The defense team shall return all Confidential Discovery provided
15 pursuant to this Order to the government fourteen calendar days after any one of the following
16 events, whichever occurs latest in time: dismissal of all charges against defendant; defendant's
17 acquittal by court or jury; or the conclusion of any direct appeal. In the event that the defense
18 team has made notes or marks on the Confidential Discovery constituting work product the
19 defense team shall return the materials to the government in a sealed container labeled "WORK
20 PRODUCT-DESTROY."

21 h. After the conclusion of proceedings in the district court or any direct
22 appeal in the above-captioned case, the government will maintain a copy of all Confidential
23 Discovery produced. The government will maintain such documents until the time period for
24 filing a motion pursuant to 28 U.S.C. § 2255 has expired. After the statutory time period for
25 filing such a motion has expired, the government may destroy the documents. In the event a
26 defendant is represented by counsel and files a motion pursuant to 28 U.S.C. § 2255, the
27 government will provide that counsel with a copy of the Confidential Discovery under the same
28 restrictions as trial and direct appeal defense counsel. Defendant's attorney in any action under

1 28 U.S.C. § 2255 shall return the Confidential Discovery fourteen calendar days after the district
2 court's ruling on the motion or fourteen calendar days after the conclusion of any direct appeal
3 of the district court's denial of the motion, whichever is later

4 IT IS SO STIPULATED.

5 DATE:

Respectfully submitted,

6 JOSEPH P. RUSSONIELLO
7 United States Attorney

8 _____/s/
9 GARTH HIRE
10 Assistant United States Attorney
11 _____/s/
12 DOUGLAS I. HORNGRAD, ESQ.
13 Counsel for Jose Antonio Cruz

14 **ORDER**
15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED: The government is hereby
16 authorized, pursuant to Federal Rule of Criminal Procedure 16, to disclose discovery to the
17 defense and may designate discovery to be governed by this protective order as Confidential
18 Discovery. The parties are hereby ordered to comply with the conditions set forth in paragraphs
19 4(a)-(h) of this stipulation and order pursuant to Federal Rule of Criminal Procedure 16(d)(1).

20 DATED: March 25, 2010

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22 HONORABLE D. LOWELL JENSEN
23 UNITED STATES DISTRICT JUDGE
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